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Copyright Royalty Board

37 CFR Part 380

[Docket No. 19-CRB-0005-WR (2021-2025) COLA (2023)]

Cost of Living Adjustment to Royalty Rates for Webcaster Statutory License

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates that commercial and noncommercial noninteractive webcasters pay for eligible transmissions pursuant to the statutory licenses for the public performance of and for the making of ephemeral reproductions of sound recordings.

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

Applicability date: These rates are applicable to the period January 1, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707-7658, crb@loc.gov.

SUPPLEMENTARY INFORMATION: Sections 112(e) and 114(f) of the Copyright Act, title 17 of the United States Code, create statutory licenses for certain digital performances of sound recordings and the making of ephemeral reproductions to facilitate transmission of those sound recordings. On October 27, 2021, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under those licenses for the license period 2021-2025 for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. *See* 86 FR 59452.

Pursuant to those regulations, at least 25 days before January 1 of each year from 2022 to 2025, the Judges shall publish in the Federal Register notice of a COLA applicable to the royalty fees for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. 37 CFR 380.10.

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November 2020 (260.229), according to the formula: for subscription performances, $(1 + (C_y - 260.229)/260.229) \times \0.0026 ; for nonsubscription performances, $(1 + (C_y - 260.229)/260.229) \times \0.0021 ; for performances by a noncommercial webcaster in excess of 159,140 ATH per month, $(1 + (C_y - 260.229)/260.229) \times \0.0021 ; where C_y is the CPI-U published by the Secretary of Labor before December 1 of the preceding year. The adjusted rate shall be rounded to the nearest fourth decimal place. 37 CFR 380.10(c). The CPI-U published by the Secretary of Labor from the most recent index published before December 1, 2022, is 298.012.¹ Applying the formula in 37 CFR 380.10(c) and rounding to the nearest fourth decimal place results in an increase in the rates for 2023.

The 2023 rate for eligible transmissions of sound recordings by commercial webcasters is \$0.0030 per subscription performance and \$0.0024 per nonsubscription performance.

Application of the increase to rates for noncommercial webcasters results in a 2023 rate of \$0.0024 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

As provided in 37 CFR 380.10(d), the royalty fee for making ephemeral recordings under section 112 of the Copyright Act to facilitate digital transmission of

¹ This CPI-U was announced on November 10, 2022, by the Bureau of Labor Statistics in its *Consumer Price Index News Release – Consumer Price Index*, available at <https://www.bls.gov/news.release/cpi.htm> at Table 1.

sound recordings under section 114 of the Copyright Act is included in the section 114 royalty fee and comprises 5% of the total fee.

List of Subjects in 37 CFR Part 380

Copyright; sound recordings.

Final Regulations

In consideration of the foregoing, the Judges amend part 380 of title 37 of the Code of Federal Regulations as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

2. Section 380.10 is amended by revising paragraph (a) to read as follows:

§ 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *Royalty fees.* For the year 2023, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

(1) *Commercial webcasters:* \$0.0030 per Performance for subscription services and \$0.0024 per Performance for nonsubscription services.

(2) *Noncommercial webcasters:* \$1,000 per year for each channel or station and \$0.0024 per Performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

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Dated: November 28, 2022.

David P. Shaw,
Chief Copyright Royalty Judge.

[FR Doc. 2022-26229 Filed: 12/1/2022 8:45 am; Publication Date: 12/2/2022]